IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8901 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL ASHWINKUMAR PARSHOTTAM- DAS & 34 - Petitioner(s)
Versus
SARPANCH BALISAN GRAM PANCHAYAT & 5 - Respondent(s)

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Appearance :
MR KANUBHAI I PATEL for Petitioner(s) : 1 - 35.
MR DEEPAK M SHAH for Respondent(s) : 1,
MR RAJAN D SHAH for Respondent(s) : 1,
Ms.KRINA CALLA, ASST GOVERNMENT PLEADER for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 2 - 5.
MR HS MUNSHAW for Respondent(s) : 3 - 4.
MR HARDIK C RAWAL for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 05/03/2008

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Rule. Service of rule is waived by Mr.Deepak M. Shah for

respondent no.1, Ms.Krina Calla, learned Assistant Government Pleader for respondent nos.2 & 5, Mr.H.S. Munshaw, for respondent nos.3 and 4 and Mr.Hardik C. Rawal for respondent no.6.

2. In this petition under Article 226 of the Constitution of India, the petitioners, 35 in number, who are occupying the cabins/ shops in Balisana Gram Panchyat area have prayed that the respondent authorities, viz. Balisana Gram Panchayat, Government of Gujarat, Patan District Panchayat and Patan Taluka Panchayat as well as the Collector, Patan be restrained from demolishing the cabins/ shops occupied by the petitioners. The petitioners have also prayed that the respondent-authorities be directed to ratify the resolutions and actions of Balisana Gram Panchayat regarding allotment of the land in question.

3. It appears that the Gram Panchayat had allotted the land in question for putting up cabins/ shops and the Gram Panchayat is recovering rent from the occupants. It also appears that the Gram Panchayat recommended to the higher authorities for regularisation of such allotment and construction of cabins/ shops, but the State Government in the Revenue Department by communication dated 17th January 2007 addressed to the Collector, Mehsana, refused to regularise the allotment of land for putting up cabins/ shops on the land in question, because the

Government found that the cabins/ shops in question are situate on the land covered by the Ribbon Development Regulations as part of the land abuts on the *Patan-Unjha* State Highway.

4. In view of the above Government decision dated 17th January 2007, it is not possible to direct the State Government to regularise the cabins/ shops on the land in question which abuts Patan-Unjha State Highway. However, at the hearing of the petition, in response to a query from the Court, Ms.Krina Calla, learned Assistant Government Pleader states under instructions of Mr.R.V. Patel, Assistant Engineer, Roads & Buildings Department, Mr.H.A. Gachi, Chitnis to the Collector, Patan, and Mr.G.A. Prajapati, Deputy Mamlatdar (Land) in the Office of the Collector, Patan that if the petitioners undertake to remove the cabins/ shops in question, as and when the State Government decides to widen *Patan-Unjha* State Highway or requiring the land for ensuring smooth traffic movement, the Government will not remove such cabins/ shops till the Government takes the decision to widen the road or the land is required for ensuring smooth traffic movement and also undertake that in that event the petitioners will not claim any compensation on account of removal/ demolition of the shops/ cabins.

5. In view of the above fair stand being adopted by the State Government authorities, we are of the view that nothing further is

required to be done in this petition, except the direction to be issued to the authorities to abide by the said statement.

6. At this stage, Mr.Hardik Raval, learned advocate appearing for respondent no.6 objects to the disposal of the petition on the above lines and submits that the petition should be dismissed because the construction of the shops/ cabins on the land in question is otherwise also illegal and that there is sub-letting by the original allottees to the present occupants.

7. We have not gone into the above questions as the decision of the State Government communicated to the Collector on 17th January 2007 is based merely on the ground that construction of shops/ cabins on the land in question is in violation of the Ribbon Development Regulations.

8. The petition is accordingly **disposed of** with a direction that until the State Government decides to widen *Patan-Unjha* State Highway or requires the land in question for ensuring smooth traffic movement, the petitioners will not be required to remove their cabins/ shops on the land in question and that whenever the State Government directs the petitioners to remove cabins/ shops for the purpose of widening *Patan-Unjha* State Highway or for ensuring smooth traffic movement, the petitioners will remove the cabins/ shops, without claiming any compensation. It is further

clarified that this direction will apply to the shops/ cabins which are put up on the land abutting *Patan-Unjha* State Highway and the land abutting a road covered by the Ribbon Development Regulations. The cabins/ shops on any other *Gamtal* land are not covered by the above direction and therefore, the respondents shall not remove such cabins/ shops from the land which does not abut any road covered by the Ribbon Development Regulations. It is also clarified that no cabins/ shops will be permitted on any public road, whether belonging to the Panchayat or the State Government.

It is further directed that the petitioners shall not put up any further cabin/ shop on the land in question and Balisana Gram Panchayat shall also not permit the petitioners or any other person to put up any further cabin/ shop.

9. Subject to the above directions, rule is discharged. Interim relief is vacated, subject to the aforesaid directions.

There will be no order as to costs.

(M.S. SHAH, J.)

(RAVI R. TRIPATHI, J.)

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